

## MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:35 A.M. on March 11, 2005 in Room 123-S of the Capitol.

All members were present except:

Jean Shodorf- excused

Susan Wagle- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department

Helen Pedigo, Revisor of Statutes

Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Representative Bob Bethell

Terri Roberts, Kansas Coalition for Workplace Safety

Mark Desitti, Kansas National Education Association

Others attending:

See attached list.

Chairperson Brownlee opened the meeting by having Kathie Sparks, Legislative Research, to explain **HB 2157**. Ms. Sparks stated **HB 2157** would amend the Employment Security Law to disqualify from benefits an individual who, initially hired by an adult care home or a home health agency, and then was subsequently convicted of a disqualifying felony and discharged under the statutes of either the adult care home or the home health agency.

Chairperson Brownlee opened the hearing on **HB 2157** by introducing Representative Bob Bethell to give his testimony. Representative Bethell stated that **HB 2157** is to correct an inequity in the current law which requires nursing facilities and home health care services to do a background check on new hires. If a background check provides information of a conviction for certain person felonies that person cannot be hired. The problem with current law is, if a person has been charged but not convicted of a person felony it will not show up on the background check. If after employment that person is convicted of a person felony, they must be terminated according to law. The facility then becomes liable for unemployment payments to the person terminated. This bill would change this and not make the employer liable. Representative Bethell presented written testimony. (Attachment 1)

Upon completion of Representative Bethell's testimony there was discussion with the Committee. The discussion was regarding whether the crime had to be committed before employment or after. Representative Bethell explained it would apply if the employee committed the crime before or after he was employed. He stated that in most cases, if a person is charged, it may take some time to go to trial. There is a period after the crime and before the trial that it would not show up on a background check. Therefore, if the person is found guilty after a trial the employer would be required by state law to terminate that person's employment. The discussion continued on whether this law covered several occupations or was it just health care. Representative Bethell stated it was just healthcare employees.

Chairperson Brownlee announced to the Committee there was written testimony from Debra Zehr, Executive Vice President of the Kansas Association of Homes and Services for the Aging, a proponent of **HB 2157**. (Attachment 2)

With no further questions, Chairperson Brownlee closed the hearing on **HB 2157**.

A motion was made by Senator Kelly to move the bill out favorably. Senator Jordan seconded. Motion carried.

Chairperson Brownlee opened the continued hearing on **HB 2141** by introducing Terri Roberts, Kansas Coalition for Workplace Safety to give her testimony. Ms. Roberts stated the Coalition for Workplace Safety opposes many of the changes in **HB 2141**. She stated what is proposed goes to far with the "conclusive" language that makes all test results, even false positives, "no rebuttal". The Kansas Coalition for Workplace

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:35 A.M. on March 11, 2005 in Room 123-S of the Capitol.

Safety feels the Jack Amendment will attempt to balance all factors regarding testing. If the Jack Amendment is added to the bill they could support it. Ms. Roberts presented written testimony. (Attachment 3)

Chairperson Brownlee introduced Mark Desetti, Kansas National Education Association, to give his testimony. Mr. Desetti stated the Kansas National Education Association feels the Jack Amendment would fix this bill. He presented written testimony. (Attachment 4)

Chairperson Brownlee announced to the Committee there was written testimony from Ernest Kutzket, Advocacy Director for AARP of Kansas, an opponent of **HB 2141**. (Attachment 5)

Chairperson Brownlee called on Duane Simpson stating she understood he had additional information. Mr. Simpson passed out information from the Department of Transportation, the Federal Register: November 25, 1998, Amendments to Opiate Threshold Levels. Mr. Simpson stated the information listed might help the Committee with questions and concerns they might have concerning the Opiate threshold levels regarding ut poppy seed cake causing false positives. (Attachment 6)

The Committee had discussion regarding false positives and if the Federal level designed their policy to take care of false positives by setting levels. Mr. Simpson stated the Federal policy was designed to prevent false positives. The discussion continued with Mr. Desetti joining in regarding what test were done and what information was available to the employer on results of the blood test. Tom Whitaker, Motor Carriers Association joined the discussion and stated under the DOT testing the only information available to the employer is "positive" or "not positive". The Committee also had discussion with Teri Roberts regarding her testimony on the alcohol levels. More discussion ensued on subject of a false positive. There seemed to be concern regarding possible mistakes during the testing causing false positives. Chairperson Brownlee stated "We cannot have a system so frail and weak it doesn't allow for evidence to be handled properly" Chairperson Brownlee feels the guidelines for testing were written very carefully to ensure fewer false positives due to mistakes during the testing process. Senator Reitz entered the discussion giving his input as a doctor regarding the testing. Senator Reitz stated sometimes mistakes can be made in the testing process. Tom Whitaker entered the discussion and stated under the DOT they are required to do split samples and the test is required to be reviewed by a medical officer. If that medical officer has questions with the test results, he/she is required to contact the driver and visit about any medications being taken or why there is a abnormality with the test. Then the medical officer decides whether it is a positive test or a negative test. The discussion continues with Senator Kelly joining. She referred to Senator Reitz's statement from yesterday that he likes a bill that is "fair and enforceable". She also feels that same way. She doesn't see a problem with the Jack Amendment. She stated it was distressing to her to take away the "little guy's" right to go to court. She also mentioned Pat Shelley's testimony in which he stated his work comp premiums go up while a case is pending and this is also a concern to her. Chairperson Brownlee called on Marlee Carpenter to address Senator Kelly's concern regarding the work comp insurance premiums. Ms. Carpenter explain that as long as the case was pending the insurance company could assume the claim would have to be paid, therefore, the premium goes up.

Chairperson Brownlee called on A.J. Kotich, General Council for the Department of Labor to give his view of **HB 2141**. He stated he had a concern with the language "conclusive". He also stated there are good points and there are bad points in **HB 2141**.

Chairperson Brownlee announced the Committee would not be working **HB 2141** today and also would not get to **SB 260**. She stated that they would finish **HB 2141** during the week next week and would meet on Monday at 9:00 a.m. to take action on **SB 260**.

Chairperson Brownlee continued the discussion on drug testing referring to the testimony of Mark Desetti, KNEA, stating she had concerns regarding Mr. Desetti's statement in reference to the "Right to Privacy" and the text following on the use of drugs and alcohol on the job. Mark Desetti asked to be recognized and entered into the discussion regarding his testimony. Mr. Desetti takes issue with the way the bill is written and stated with the Jack Amendment KNEA would not have a problem support **HB 2141**.

Chairperson Brownlee closed the hearing on **HB 2141** and stated again the bill would be worked one day next

CONTINUATION SHEET

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week. The meeting was adjourned at 9:30 a.m. with the next scheduled meeting for Monday, March 14, 2005 at 9:00 a.m. in room 123S.